MEMORANDUM

DATE: April 25, 2008

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 1316 [Proposed Medicaid Buy-in Program Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend the Medicaid State Plan and Division of Social Services Manual (DSSM) regarding the implementation of the Medicaid Buy-In program for individuals with disabilities who work. The regulations were published as 11 DE Reg. 1316 in the April 1, 2008 issue of the Register of Regulations. SCPD has the following observations.

First, the "Summary of the Proposed Amendment" is somewhat underinclusive. It recites as follows: "This program will allow disabled individuals receiving Medicaid to return to the workplace without losing their Medicaid coverage, by paying a monthly premium, if applicable." The could be construed as a representation that the MBI is only available to current Medicaid beneficiaries who would lose eligibility based on returning to work. In fact, individuals who have never been on Medicaid can also qualify. <u>See, e.g.</u> the National Assistive Technology Advocacy Project Newsletter article at p. 365 and attached Delaware Medicaid Buy-in presentation materials from January 27, 2005 LIFE Conference identifying the following target groups:

- SSDI/Medicare beneficiaries who have to spend down to qualify for Medicaid
- SSDI beneficiaries who have to spend down to qualify for Medicaid
- SSI recipients with income at or above SSA limits
- SSI recipients with resources at or above the SSA limits
- Workers who are not receiving Medicaid or SSI/DI who meet the SSA disability definition in al ways except financial tests

Second, DMMA could have imposed a resource test.. <u>See</u> pp. 1318-1320. SCPD endorses the absence of a resource cap

Third, the Plan amendment on the bottom of p.1323, bottom of p.1324, and top of p.1325 contemplate that everyone pays a premium. However, §17912 clarifies that persons earning up to 100% FPL pay no premium. At a minimum, it would be preferable to amend the table on the top of p. 1325 to include an initial row for "0% - 100%" and "$0" or "none" for amount of premium. The table in §17912 could include the same clarifying edits.

Fourth, it would be preferable to include a “Resource” section in the DSSM, perhaps as §17906 (renumbering other sections), which would recite, consistent with p. 1319, that there are no resource or asset eligibility criteria for this program.

Fifth, in §17904, SCPD recommends that DMMA add the following: “The Division may also accept pre-existing documentation (e.g. school district or DVR assessment) which confirms that the individual meets SSI disability standard (e.g. I.Q. of 59 or less).” Otherwise, the Division has no choice but to pay for an evaluation despite clear documentation that the person meets the SSI standards.

Sixth, §17912 recites that an individual or couple whose AGI exceeds $90,008 must pay the highest premium. In contrast, the CMS “note” on p. 1324 recites that “the agency MUST require that individuals whose annual adjusted gross income, as defined in IRS statute, exceeds $75,000 pay 100% of premiums.” The above AT article (p. 365) recites as follows: “States must require a 100 percent premium payment for individuals with adjusted gross incomes greater than $75,000 unless states choose to subsidize the premium using their own funds.” It is unclear if: 1) the CMS standard has been increased to $90,008 in 2008; or 2) DMMA is subsidizing premiums for persons with AGI between $75,001 and $90,007. DMMA may wish to reassess the accuracy of the $90,008 figure.

Seventh, §17909 contemplates application of standard SSI deeming rules. For 16 and 17 year old applicants, this would generally mean deeming of parental income. However, §17910.2 only refers to spousal deeming. DMMA may wish to consider incorporating a reference to parental deeming for 16-17 year old program participants.

Eighth, unearned income is excluded up to $800/month/individual (Section 17907). This could exclude many individuals who could benefit from the MBI program that receive benefits from the Social Security Administration (e.g. SSDI). Indeed, this a target population specifically referenced by Medicaid at many of its presentations. See, for example, the attached MBI presentation from the January 27, 2005 LIFE Conference and the listed target groups. SCPD recommends that income derived from the Social Security Administration (SSA) be disregarded. DMMA could still implement the unearned income exclusion up to $800, but disregard any income from the SSA.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulations.

cc: Mr. Harry Hill
Mr. Stephen Groff
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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